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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Reexamination of the)
Policy Statement on)
Comparable Broadcast)
Hearings)

92-52

RM-7739

RM-7740

RM-7741

COMMENTS OF TRANS-COLUMBIA COMMUNICATIONS
ON SECOND FURTHER NOTICE ON PROPOSED RULEMAKING

I. Introduction

Trans-Columbia Communications ("Trans-Columbia"), by its attorneys, hereby submits its comments in the above-captioned proceeding. Trans-Columbia is an applicant for an FCC license in Vancouver, Washington. Trans-Columbia is a general partnership owned by two broadcasters with a wealth of experience who, for quite a long time, have resided in the Vancouver area and have been civically active there. In short, Trans-Columbia is a "real" applicant that can be counted on to provide substantial service to the local community. Unfortunately, Trans-Columbia has had to compete with sham applicants without the experience, background, wherewithal, or ability to build and operate a radio station. These sham applications delay the Commission's proceedings and force the "real" applicants to spend large sums of money chasing them. Shams waste public and private resources.

Thus, in the interest of fostering "real" applicants, Trans-Columbia submits these comments. Before submitting these

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comments, Trans-Columbia urges the Commission to act expeditiously for the following reasons.

The Vancouver proceeding, like the other pending comparative proceedings, is currently stayed pending the issuance of new comparative criteria. There are serious applicants like Trans-Columbia that want to get on with the business of finishing the proceeding and building a station, but no progress can be made until the Commission completes this proceeding. Expeditious Commission action is, therefore, necessary.

These comments emphasize the usefulness of awarding enhancements based on factors previously considered only as qualitative factors of integration. These factors -- broadcast experience, local residence, civic activity, and true minority control -- distinguish between spurious applications and those with integrity, which must be the Commission's fundamental goal.

Past broadcast experience should be elevated in importance. It should not be only of minor significance, as provided by the 1965 Policy Statement; rather, broadcast experience, especially in the geographic area for which a new station is authorized, should be of primary importance. It is the surest criterion for way the Commission to use to award licenses to applicants who want to be in the broadcasting business for the long haul. Only in this way can the Commission encourage "real" applicants and, once and for all, eliminate shams. Minority status should be a factor, but commensurate with actual, attributable, proven minority control. Minority shams have no place in this process.

Moreover, the existing minority ownership in the 1 mV/m contour and the percentage of minority population in the community of license should also be weighed. With these revised criteria in place, but also with a ban on amendments of existing applications to prevent upgrades, the Commission could restore stability to, and weed out shams from, the comparative process.

II. In descending rank, (i) broadcast experience, (ii) local residency, (iii) civic activity and (iv) minority status, should be the basis for substantial enhancements at the comparative criteria stage

In assessing an applicant's incentives, interest, and information in the community of the license and in the business of actually operating a license, the Commission must consider certain qualitative factors. With the abolition of integration, these factors are good indicators of the actual service that the public will receive from an applicant. An applicant's commitment to the license is a factor that should not be undervalued, especially because the Commission must differentiate between quick buck, sham artists and real operators looking to operate a station and serve a public good.

Broadcast experience should receive the most substantial enhancement value. Applicants with broadcast experience are most likely to retain and license and actually deliver the service promised in an application. Their experience demonstrates their previous incentive and interest. Past experience is the best guide to the future.

The Commission should also recognize and award enhancement value for an applicant's local residency in the community of the license or within the 1 mv contour. Residence within the community of license indicates a degree of commitment (interest) and familiarity (information) which a non-resident does not possess. Likewise, when recognizing community service, additional weight should be given if the service is in the community of the license (or 1 mv contour). To a lesser degree, civic activity within the applicant's community of residence, as opposed to the community of the license, also deserves enhancement value.

Minority status is a significant factor deserving of enhancement value, however, applicants should only be awarded minority enhancement commensurate with the attributable minority control of the applicant body. The total weight given to minority enhancement should also be based on existing minority ownership of media in the community of license (or the 1 mv contour) and the percentage of minority population in the community of the license. There is a strong public policy interest in diversifying ownership of mass media to attain greater minority ownership, i.e., real minority ownership. Indeed, it is possible that if sham minority ventures are given credit that they will preclude others from entering the market. Minority enhancement should be denied to minority shams, and in all cases, minority credit should be limited to the extent of actual minority control of the applicant.

Additionally, in fulfilling the Commission's stated objective of diversifying ownership, the Commission should continue strict enforcement of divestiture pledges, and applicants with no attributable media holdings should receive enhancements. The Commission should also reinstate the three year (or some other reasonable time period) holding rule on new allocations as well as in license transfer grants and renewal proceedings as a pledge to be strictly enforced in exchange for enhancement.

III. The Commission should not permit the amendment of pending applications based upon any newly adopted comparative criteria

Amendments of pending applications should be prohibited. Allowing amendments subsequent to the issuance of new comparative criteria would only invite parties to re-conceive their applications to enhance comparative standing under the new standards, rather than adhere to their original intentions. Such amendments could be vehicles for abuse of the Commission's Rules through worthless pledges and sham structures which likely would be abandoned once a grant had been won, thereby allowing manipulation of the rules. Instead, if these proceedings are to have any legitimacy, applicants in pending cases must be judged as to whether they structured their ownership and wrote their applications in such a way to construct and operate the station in the public interest, convenience, and necessity, not merely to enhance chances in comparative hearings. No changes in the middle of the process should be allowed. Evidentiary proceedings

regarding circumstances previously identified by the Commission would proceed under the new criteria as necessary, provided that amendments by applicants to enhance their comparative standing under the new standards would be prohibited.

For example, in the case of Trans-Columbia's application, the Judge has already determined that three applicants -- Columbia FM, McCoy Communications, and Clark Broadcasting -- are disqualified under considerations apart from integration. Another applicant, Q-Prime, was assessed a diversification demerit. As a result of these conclusions which are subject to appeal, these four applicants were not entitled to comparative consideration. The new proposed rulemaking should not either directly or indirectly allow these applications to be rejuvenated to any extent.

IV. Any new comparative criteria should also be tempered and conformed to Bechtel

In the absence of integration as the yardstick by which enhancements are measured, the structure and control of the applicant body must be the new standard. False claims of ownership should result in disqualification and even referral under 18 U.S.C. § 1001. Valuable resources and significant time have already been spent in the pending cases to determine the percentage of enhancements due an applicant based on the actual control within the structure of the applicant body. Surely, the fully enhanced sole proprietor who is not otherwise disqualified

prevail over a two-tiered applicant, where the individual receiving enhancement credit has less than 100% of the voting control and equity.

The Commission should apply all comparative criteria and standards to all new allocations, all license transfer cases, and all license renewal challenges when mutually exclusive applications exist. The Commission should also reinstate and apply the 3 year holding rule (or some other reasonable period of time) in all new construction permits, license transfer grants and renewals.

V. Conclusion

The reissuance of comparative criteria is an opportunity for the Commission to assess the true merits of each application, rather than to reward the ability and creativity of an applicant or its counsel to fashion a winning combination of enhancements. Valuing an applicant's pre-existing commitment and familiarity with the community of license should accomplish this goal.

For the same reason, the Commission should minimize the procedural jockeying subsequent to reissuance of comparative criteria. Trans-Columbia and other "real" applicants have spent a great deal of time, money, and effort that have resulted in rejection of certain applicants as unqualified. Shams that have been exposed should not be given a second opportunity for re-evaluation, recertification or requalification. It is time for the rewards go to the "real" applicants, rather than to shams that seem never to die.

The Commission's goal in making new allocations should be to bring new services to the public expeditiously. Every effort should now be focused to accomplish this primary objective by fostering serious applications and swiftly rejecting shams.

Respectfully submitted,

TRANS-COLUMBIA COMMUNICATIONS

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CERTIFICATE OF SERVICE

I, Dean R. Brenner, do hereby certify that a true and correct copy of the foregoing "COMMENTS OF TRANS-COLUMBIA COMMUNICATIONS ON SECOND FURTHER NOTICE ON PROPOSED RULEMAKING" was served by hand this 20th day of July, 1994, to:

David S. Senzel
Office of the General Counsel
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A handwritten signature in dark ink, appearing to read "D. Brenner", is written over a horizontal line.

Dean R. Brenner